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DEPARTMENT OF COMMERCE

International Trade Administration

A-552-814

Utility Scale Wind Towers from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony with the Final Determination of Less Than Fair Value Investigation and Notice of Amended Final Determination of Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On March 16, 2017, the United States Court of International Trade (CIT or Court) issued its final judgment, affirming the Department of Commerce's (the Department) final results of redetermination concerning the less-than-fair-value investigation (LTFV) of utility scale wind towers from the Socialist Republic of Vietnam (Vietnam). The Department is notifying the public that the Court's final judgment in this case is not in harmony with the Department's final determination in the LTFV investigation on utility scale wind towers from Vietnam, and is amending the final determination with respect to CS Wind Vietnam Co., Ltd. and CS Wind Corporation (collectively, CS Wind Group).

DATE: Effective March 26, 2017

FOR FURTHER INFORMATION CONTACT: Trisha Tran, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-4852.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2013, the Department published its amended final determination and antidumping duty order in this proceeding.¹ The CS Wind Group appealed the *Wind Towers Final Determination* to the CIT, and on March 27, 2014, the CIT remanded the *Wind Towers Final Determination* to the Department.² On July 29, 2014, the Department filed its results of redetermination pursuant to remand in accordance with the CIT's order.³

On November 3, 2014, the CIT affirmed, in part, and remanded in part, the Department's *Final First Redetermination*, which resulted in a weighted-average dumping margin of 17.07 percent for the CS Wind Group.⁴ In the *Final Second Redetermination*, the Department revised its calculation of certain surrogate financial ratios.⁵ The Court affirmed the Department's second remand in its entirety on May 11, 2015, which resulted in a weighted-average dumping margin of 17.02 percent for the CS Wind Group.⁶

The CS Wind Group challenged the CIT's affirmance of the Department's *Final Second Redetermination*. On August 12, 2016, the CAFC directed the CIT to remand the matter to the Department, and in so doing: (1) reversed the CIT's affirmance of the Department's use of packing weights rather than the factors of production (FOP) weights in its calculation of

¹ See *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012), as amended by *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 11150 (February 15, 2013) (*Wind Towers Amended Final Determination*).

² See *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, 971 F. Supp. 2d 1271 (CIT 2014).

³ See *Final Results of Redetermination Pursuant to Court Order, CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, Slip Op. 14-33, dated July 29, 2014 (*Final First Redetermination*); see also <http://enforcement.trade.gov/remands/index.html>.

⁴ See *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, Slip Op. 14-128 (CIT November 3, 2014).

⁵ See *Final Redetermination Pursuant to Court Order, "CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, Slip Op. 14-128, (November 3, 2014)," dated January 21, 2015 (*Final Second Redetermination*); see also <http://enforcement.trade.gov/remands/index.html>.

⁶ See *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, Slip Op. 15-45 (CIT May 11, 2015).

surrogate value; and, (2) vacated and remanded the CIT's overhead determination with respect to jobwork charges, erection expenses, and civil expenses.⁷ The Department issued its *Final Third Redetermination*⁸ on December 9, 2016. On March 16, 2017, the Court affirmed the Department's *Final Third Redetermination* in its entirety.⁹

Timken Notice

In its decision in *Timken*,¹⁰ as clarified by *Diamond Sawblades*,¹¹ the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's March 16, 2017, judgment affirming the *Final Third Redetermination* constitutes a final decision of that court that is not in harmony with the *Wind Towers Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Determination

Because there is now a final court decision with respect to this litigation, the Department is amending the *Wind Towers Final Determination* with respect to the CS Wind Group's dumping margin and cash deposit rate. The revised dumping margin and cash deposit rate for this exporter/producer combination is 0.00 percent.¹²

⁷ See *CS Wind Vietnam Co., Ltd., and CS Wind Corporation v. United States and Wind Tower Coalition*, 832 F.3d 1367 (Fed. Cir. 2016).

⁸ See Final Results of Redetermination Pursuant to Court Order, *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, dated October 4, 2016 (*Third Final Redetermination*).

⁹ See *CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Consol. Court No. 13-00102, Slip Op. 17-26 (CIT March 16, 2017); see also <http://enforcement.trade.gov/remands/index.html>.

¹⁰ *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹¹ *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹² See *Final Third Redetermination*.

Producer	Exporter	Estimated Weighted-Average Dumping Margin (percent)
CS Wind Group	CS Wind Group	0.00

Partial Exclusion from the Antidumping Duty Order and Partial Discontinuation of the Antidumping Duty Administrative Review

Pursuant to sections 735(c)(2) of the Act, “the investigation shall be terminated upon publication of that negative determination” and the Department shall “terminate the suspension of liquidation” and “release any bond or other security, and refund any cash deposit.” *See* Sections 735(c)(2)(A) and (B) of the Act. As a result of this amended final determination, in which the Department calculated a weighted-average dumping margin of 0.00 percent for CS Wind Group, the Department is hereby excluding merchandise from the following producer/exporter chain from the antidumping duty order:

Producer: CS Wind Group

Exporter: CS Wind Group

Accordingly, the Department will direct U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits. This exclusion does not apply to merchandise produced by CS Wind Group and exported by any other company. Therefore, resellers of merchandise produced, or produced and exported by CS Wind Group, are not entitled to the exclusion. Similarly, the exclusion does not apply to merchandise produced by any other company and exported by CS Wind Group.

We note, however, that pursuant to Timken, the suspension of liquidation must continue during the pendency of the appeals process. Thus, at this time we will instruct CBP to continue the suspension of liquidation at a cash deposit rate of 0.00 percent for entries produced and exported by CS Wind Group until otherwise instructed and to release any bond or other security that CS Wind Group made pursuant to the *Final Third Redetermination*. If the CIT's ruling is not appealed, or if appealed and upheld, the Department will instruct CBP to terminate the suspension of liquidation and to liquidate entries produced and exported by CS Wind Group without regard to antidumping duties. As a result of the exclusion, the Department will not initiate any new administrative reviews of the antidumping duty order with respect to merchandise produced and exported by CS Wind Group. The review will continue with regard to merchandise produced by CS Wind Group and exported by another company or produced by any other company and exported by CS Wind Group.

Finally, we note that, at this time, the Department remains enjoined by Court order from liquidating entries produced and/or exported by CS Wind Group during the period February 13, 2013, through January 31, 2014. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Gary Taverman

Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

March 24, 2017

Date

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